THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 13067 of 2005

Dated 27.10.2005

M/S Divya Sai Medical Agencies.

..... APPELLANT(S)

AND

The Commercial Tax Officer, Park Road Circle,

Vijayawada.

.....RESPONDENT(S)

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 13067 of 2005

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ORAL ORDER: (Per Sri BRSR,J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the action of the respondent – Commercial Tax Officer, Park Road Circle, Vijayawada in

collecting the “users charges “ of Rs.2,28,342/- without being preceded by any show cause notice followed by subsequent proceedings as illegal and without any authority of law. It is also the case of the petitioner that the said action is ultra vires the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short ‘the Act’) apart from being in contravention of the law declared by this Court in ***AMBICA LAMP HOUSE, RAJAHMUNDRY Vs. COMMERCIAL TAX OFICER (INT) ENFORCEMENT, HYDERABAD.*** The petitioner accordingly prays for issuance of a consequential direction directing the respondent to return the said amount with interest at the rate of 18% per annum from the date of collection till its refund.

The petitioner is a registered dealer on the rolls of the respondent – Commercial Tax Officer. It is engaged in purchasing and selling of drugs and medicines purchased from within and outside the state of Andhra Pradesh. The petitioner however affects the sales within the state of Andhra Pradesh. The firm was inspected by the respondent on 9.12.2003 and during the course of such inspection certain irregularities were found, the details of which are not required to be gone into in this writ petition. Accordingly, the respondent estimated the turnover to the best of judgment and the tax was collected at 10% on an amount of Rs.11,41,714/- and compounding fee was also collected for compounding the offence in a sum of Rs.2,28,342/- vide money receipt No.4914218 dated 16.12.2003. The compounding fee is shown as if the same was collected under the head ‘users charges’.

There is no dispute whatsoever that at the time of collection of amounts towards the tax as well as penalty and compounding fee, the petitioner was not served with any show cause notice nor with any order of assessment. The order of assessment was actually passed on 14.12.2004 and communicated to the petitioner on 4.1.2005. The petitioner preferred an appeal on 1.2.2005 both as against the imposition of tax and as well as the penalty. The Appellate Deputy Commissioner (CT) Vijayawada vide orders dated 30.3.2005 allowed the appeal preferred by the petitioner against the assessment order. However, he rejected the appeal preferred by the petitioner against the imposition of penalty about which we do not propose to express any opinion since the same is not impugned in this writ petition.

The short question that falls for our consideration is whether the petitioner is entitled to the relief of refund of the amounts collected towards the compounding fee.

Sri MVJ Kumar, learned counsel for the petitioner submits that the whole procedure adopted by the respondent right from inspection till the collection of tax, penalty and the compounding fee is illegal and ultra vires the provisions of the said Act. It is submitted that the procedure adopted for such collection is contrary to the law declared by this Court in ***Ambica Lamp House's*** case (supra). The Full Bench, speaking through one of us viz., S.Ananda Reddy,J, in specific terms disapproved the practice of such collection of amounts towards tax, penalty and compounding fee from the dealers and held the same to be impermissible in law.

There is no dispute whatsoever and there cannot be any dispute that the procedure adopted by the respondent herein is totally illegal and ultra vires the provisions of the Act. The learned standing counsel for the department however contended that the writ petition deserves dismissal on the ground of laches and it would be totally unnecessary to go into the merits of the claim of the petitioner and decide as to whether the petitioner is entitled for the refund of the amounts collected towards the compounding fee. The learned standing counsel submitted that the inspection was held on 9.12.2003 and the amounts were collected, even according to the petitioner under coercion, on 16.12.2003 whereas the present writ petition has been filed on 17.6.2005, after a period of more than1 ½ years. The submission is that this Court would not entertain stale claims in a proceeding under Article 226 of the Constitution of India. We find some force in the submission made by the learned standing counsel. But, the question is whether on the facts and circumstances, the petitioner is entitled to any relief or the writ petition deserves dismissal on the ground of laches.

We have already noted that the order of assessment is dated 14.12.2004 against which the petitioner preferred appeal, which was allowed on 30.5.2005 holding that the petitioner is not liable to pay any tax. The petitioner approached this Court within a period of three months from the date of dismissal of the appeal preferred by it before the appellate Deputy Commissioner. The fact that the appeal preferred by the

petitioner is allowed cannot be denied. On account of laches on the part of the petitioner, no corresponding right accrued in favour of the respondent. In such view of the matter, we are not inclined to dismiss the writ petition on the ground of laches. We accordingly hold that on the facts and in the circumstances, the petitioner is entitled to the relief as prayed for.

Accordingly, there shall be a direction to the respondent to refund the amount of Rs.2,28,342/- collected from the petitioner vide money receipt No.4914218 dated 16.12.2003 together with interest at 12% per annum within a period of two months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed without any order as to costs.

(B.SUDERSHAN REDDY,J)

dated 27.10.2005

(S.ANANDA REDDY,J)

msv.